

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

REGINALD L. MCCOY,  
  
Petitioner,  
  
v.  
  
B.M. TRATE,  
  
Respondent.

Case No. 1:22-cv-00031-HBK (HC)

ORDER DENYING PETITIONER’S MOTION  
FOR A TEMPORARY RESTRAINING  
ORDER<sup>1</sup>

ORDER DENYING PETITIONER’S MOTION  
TO COMPEL MEDICAL TREATMENT

(Doc. Nos. 48, 49)

Before the Court is Petitioner Reginald L. McCoy’s (“Petitioner”) motion for preliminary injunction and temporary restraining order (Doc. No. 48) and motion to compel officials at USP Atwater to provide Petitioner with medical care (Doc. No. 49). Petitioner is a federal prisoner who is proceeding pro se on his petition for writ of habeas corpus filed under 28 U.S.C. § 2241. (Doc. No. 1, “Petition”). Respondent filed a response in opposition to Petitioner’s motion for a preliminary injunction and temporary restraining order. (Doc. No. 49). For the reasons set forth below, the Court denies both motions.

**I. BACKGROUND**

Petitioner, a federal prisoner, is serving concurrent terms of life imprisonment followed by

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<sup>1</sup> Both parties have consented to the jurisdiction of a magistrate judge, in accordance with 28 U.S.C. § 636(c)(1). (Doc. No. 20).

1 concurrent 120-month terms of supervised release, for his conviction, after jury trial, for  
 2 conspiracy to possess with intent to distribute 50 grams or more of cocaine base (crack) in  
 3 violation of 21 U.S.C. §§ 841(a)(1) and 846 (Count 1), and substantive possession with intent to  
 4 distribute 50 grams or more of cocaine base (crack) in violation of 21 U.S.C. § 841(b)(1) (Count  
 5 2) entered by the U.S. District Court for the Middle District of Florida (“MDFL”). *See United*  
 6 *States v. McCoy*, 8:90-cr-00132-CEH-AAS, Crim Doc. Nos. 398, 438, 447 (M.D. Fla.); (Doc. No.  
 7 12-1 at 45, 50). The Petition challenges, via the escape hatch, the validity and constitutionality of  
 8 Petitioner’s sentence imposed by the United States District Court for the Middle District of  
 9 Florida. (Doc. No. 1). On August 9, 2022, the Court granted Respondent’s motion to stay this  
 10 matter pending resolution of Petitioner’s § 3582 motion for compassionate release pending in the  
 11 MDFL, Petitioner’s court of conviction. (Doc. No. 36). As of the most recent status report filed  
 12 on December 20, 2022, the § 3582 motion remains pending in the MDFL.

13 In his motion seeking a preliminary injunction, Petitioner argues he will suffer irreparable  
 14 harm in the absence of preliminary relief because is he is “in lockdown in a two man cell eating  
 15 bread and cheese, smelling another man defecation [sic] and limited in his telephone minutes to  
 16 his family and friends”; and he “continues to be threatened by staff to be locked in segregated  
 17 housing unit if he does not conform to prison rules.” (Doc. No. 48 at 3). Petitioner further  
 18 contends his release must be expedited because his pending action in the MDFL had to be  
 19 rescheduled due to Covid-19, and “any further delay of Petitioner’s release can only cause his  
 20 undue prejudice and a continual miscarriage of justice.” (*Id.* at 4).

21 In his motion seeking medical care, Petitioner complains that he is “seeing clouds in [his]  
 22 vision” and needs medical treatment but was told he was not o the list to see an optometrist.  
 23 (Doc. No. 50). He asks the Court to “compel USP Atwater to provide medical treatment.” (*Id.*).

## 24 II. APPLICABLE LAW AND ANALYSIS

25 Injunctive relief, whether temporary or permanent, is an “extraordinary remedy, never  
 26 awarded as of right.” *Winter v. Natural Res. Defense Council*, 555 U.S. 7, 22 (2008). A federal  
 27 court may issue emergency injunctive relief only if it has personal jurisdiction over the parties  
 28 and subject matter jurisdiction over the lawsuit. *See Murphy Bros., Inc. v. Michetti Pipe*

1 *Stringing, Inc.*, 526 U.S. 344, 350 (1999). “A plaintiff seeking a preliminary injunction must  
 2 establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in  
 3 the absence of preliminary relief, that the balance of equities tips in his favor, and that an  
 4 injunction is in the public interest.” *Glossip v. Gross*, 135 S. Ct. 2726, 2736-37 (2015) (quoting  
 5 *Winter*, 555 U.S. at 20). “[P]laintiffs must establish that irreparable harm is likely, not just  
 6 possible, in order to obtain a preliminary injunction.” *Alliance for the Wild Rockies v. Cottrell*,  
 7 632 F.3d 1127, 1131 (9th Cir. 2011). Moreover, “[b]ecause it is a threshold inquiry, when ‘a  
 8 plaintiff has failed to show the likelihood of success on the merits, [courts] need not consider the  
 9 remaining three [Winter elements].’” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir.  
 10 2015) (quoting *Ass’n des Eleveurs de Canards et d’Oies du Quebec v. Harris*, 729 F.3d 937, 944  
 11 (9th Cir. 2013)).

12 Respondent argues Petitioner fails to establish a likelihood of success on the merits even  
 13 as to whether this Court has jurisdiction to proceed on his underlying § 2241 Petition. (Doc. No.  
 14 49 at 3). In addition, Respondent cites Petitioner’s “recently raised and renewed claims via  
 15 additional filings” in his court of conviction, and his history of filing over 50 post-conviction and  
 16 post direct appeal motions, and related demands, with many titled “emergency.” (*Id.* at 2, 4).

17 Petitioner provides no argument that he is likely to succeed on the merits of his claim.  
 18 (*See generally* Doc. No. 48). Moreover, as noted *supra*, the underlying matter is stayed pending  
 19 resolution of motions filed by Petitioner in the MDL and the Court has not yet determined  
 20 whether it even has jurisdiction to consider the § 2241 Petition. Because Petitioner has not shown  
 21 that he is likely to succeed on the merits of his claim, the Court need not analyze the remaining  
 22 *Winter* elements. *See Garcia*, 786 F.3d at 740.

23 As a final matter, to the extent Petitioner is asserting claims regarding the conditions in  
 24 “lockdown,” his ability to contact his family, and threats from prison staff, relief on these claims  
 25 would not necessarily lead to petitioner’s “immediate or earlier release from confinement” and  
 26 therefore are not cognizable on habeas review. *Nettles v. Grounds*, 830 F.3d 922, 935 (9th Cir.  
 27 2016). Similarly, to the extent that Petitioner requires specialized medical care he must comply  
 28 with the procedures established at USP Atwater. To the extent Petitioner believes federal

officials are being deliberately indifferent to his serious medical needs, he must file a civil rights complaint in a separate action. *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971); *Carlson v. Green*, 446 U.S. 14 (1980) (recognizing suit under the Eighth Amendment's Cruel and Unusual Punishment Clause for failure to provide adequate medical treatment by federal prison officials). Petitioner may not use this habeas action to complain about the conditions of his confinement or his alleged lack of medical care.

Accordingly, it is **ORDERED**:

1. Petitioner's motion for preliminary injunction and temporary restraining order (Doc. No. 48) is DENIED.
2. Petitioner's motion to compel officials at USP Atwater to provide Petitioner with medical care for his eyes (Doc. No. 49) is DENIED.

Dated: February 8, 2023

  
HELENA M. BARCH-KUCHTA  
UNITED STATES MAGISTRATE JUDGE